



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

OCT 24 2003

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
MERCURY LONG DISTANCE, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES, EXCEPT  
LOCAL EXCHANGE SERVICES

DOCKET NO. T-04182A-03-0325

DECISION NO. 66450

ORDER

Open Meeting  
October 21 and 22, 2003  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On May 21, 2003, Mercury Long Distance, Inc. ("Applicant" or "Mercury") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. Mercury has authority to transact business in the State of Arizona.

5. On July 22, 2003, Mercury filed an Affidavit of Publication indicating compliance with the Commission's notice requirements.

1       6.     On August 14, 2003, the Commission's Utilities Division Staff ("Staff") filed a Staff  
2 Report, which includes Staff's fair value rate base determination in this matter and recommends  
3 approval of the application subject to certain conditions.

4       7.     In the Staff Report, Staff stated that Mercury provided financial statements for the  
5 period ending December 31, 2002, which list assets of \$18.8 million, total equity of \$1.5 million, and  
6 a net income of \$3.3 million.

7       8.     In its Staff Report, Staff stated that based on information obtained from the Applicant,  
8 it has determined that Mercury's fair value rate base ("FVRB") is zero. Staff has determined that  
9 Applicant's FVRB is too small to be useful in a fair value analysis and is not useful in setting rates.  
10 Staff further stated that in general, rates for competitive services are not set according to rate of return  
11 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set  
12 rates for Mercury based on the fair value of its rate base.

13       9.     Staff believes that Mercury has no market power and that the reasonableness of its  
14 rates will be evaluated in a market with numerous competitors. In light of the competitive market in  
15 which the Applicant will be providing its services, Staff believes that the rates in Applicant's  
16 proposed tariffs for its competitive services will be just and reasonable, and recommends that the  
17 Commission approve them.

18       10.    Staff recommended approval of Mercury's application subject to the following:

19           (a)   The Applicant should be ordered to comply with all Commission rules, orders,  
20 and other requirements relevant to the provision of intrastate telecommunications  
21 service;

22           (b)   The Applicant should be ordered to maintain its accounts and records as  
23 required by the Commission;

24           (c)   The Applicant should be ordered to file with the Commission all financial and  
25 other reports that the Commission may require, and in a form and at such times as the  
26 Commission may designate;

27           (d)   The Applicant should be ordered to maintain on file with the Commission all  
28 current tariffs and rates, and any service standards that the Commission may require;

          (e)   The Applicant should be ordered to comply with the Commission's rules and  
modify its tariffs to conform to these rules if it is determined that there is a conflict

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1 between the Applicant's tariffs and the Commission's rules;

2 (f) The Applicant should be ordered to cooperate with Commission investigations  
3 of customer complaints;

4 (g) The Applicant should be ordered to participate in and contribute to a universal  
5 service fund, as required by the Commission;

6 (h) The Applicant should be ordered to notify the Commission immediately upon  
7 changes to the Applicant's address or telephone number;

8 (i) If the Applicant, at some future, date wants to collect from its customers an  
9 advance, deposit, and/or prepayment, it must file information with the Commission for  
10 Staff review. Upon receipt of such filing and after review, Staff would forward its  
11 recommendations to the Commission;

12 (j) The Applicant's interexchange service offerings should be classified as  
13 competitive pursuant to A.A.C. R14-2-1108;

14 (k) The Applicant's maximum rates should be the maximum rates proposed by the  
15 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive  
16 services should be the Applicant's total service long run incremental costs of  
17 providing those services as set forth in A.A.C. R14-2-1109; and

18 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
19 competitive service, the rate stated should be the effective (actual) price to be charged  
20 for the service as well as the service's maximum rate.

21 11. Staff further recommended that Mercury's Certificate should be conditioned upon the  
22 Applicant filing conforming tariffs in accordance with this Decision within 365 days of the effective  
23 date of this Decision, or 30 days prior to providing service, whichever comes first.

24 12. Staff recommended that if the Applicant fails to meet the timeframes outlined in  
25 Findings of Fact No. 11, that Mercury's Certificate should become null and void without further  
26 Order of the Commission, and that no time extensions for compliance should be granted.

27 13. The rates proposed by this filing are for competitive services.

28 14. Staff's recommendations as set forth herein are reasonable.

15. Mercury's fair value rate base is zero.

### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the  
Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

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3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services in Arizona.

6. Staff's recommendations in Findings of Fact Nos. 8, 9, 10, 11, and 12 should be adopted.

7. Mercury's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Mercury's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

## ORDER

IT IS THEREFORE ORDERED that the application of Mercury Long Distance, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, is hereby granted, conditioned upon its compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 10, 11 and 12 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11 and 12 above are hereby adopted.

IT IS FURTHER ORDERED that Mercury Long Distance, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10 and 11 above.

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1 IT IS FURTHER ORDERED that if Mercury Long Distance, Inc. fails to meet the timeframes  
2 outlined in Findings of Fact No. 11 above, that the Certificate conditionally granted herein shall  
3 become null and void without further Order of the Commission.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7   
8 CHAIRMAN

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10 COMMISSIONER

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12 COMMISSIONER

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14 COMMISSIONER

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16 COMMISSIONER

17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
18 Secretary of the Arizona Corporation Commission, have  
19 hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this 24<sup>th</sup> day of October, 2003.

22   
23 BRIAN C. McNEIL  
24 EXECUTIVE SECRETARY

25 DISSENT \_\_\_\_\_

26 DISSENT \_\_\_\_\_

27 AP:mj

1 SERVICE LIST FOR: MERCURY LONG DISTANCE, INC.

2 DOCKET NO.: T-04182A-03-0325

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